Interview Summary: David White, City of Ottawa

Background

David White has been City Solicitor at the City of Ottawa (the **City**) since August 2019. He leads the City's legal services branch which provides legal advice to the City and to the Ottawa Police Services Board (**OPSB**).

During the protests associated with the so-called "Freedom Convoy" (the **Convoy**), Mr. White and his team were involved in the City's efforts to obtain an injunction and provided other legal advice to the City. While Mr. White and his team generally provide legal advice to the OPSB with respect to its role and governance, legal advice to the OPSB during the relevant period was provided primarily by Glenn Christie, an external lawyer retained by the board.

Mr. White was interviewed by Natalia Rodriguez, Jean-Simon Schoenholz and Guillaume Sirois on August 22, 2022. Questions about this summary should be directed to Jean-Simon Schoenholz.

Injunction

Mr. White first became engaged in the City's response to the protests associated with the Convoy when the Ottawa Police Service's (**OPS**) general counsel, Christiane Huneault texted him on Friday, January 28, 2022 to advise that the OPS would be briefing the OPSB on the matter.[1]

On January 30, 2022, Chief Sloly called Mr. White to ask whether the City would be seeking an injunction with respect to the Convoy. Mr. White advised that the City would not typically obtain an injunction until a clear public safety or security issue had been identified. Mr. White explained to Chief Sloly that he did not have independent authority to pursue an injunction and directed him to Steve Kanellakos, the City Manager. Mr. White emailed Mr. Kanellakos to report on his discussion with Chief Sloly.[2]

Mr. White reported to Mr. Kanellakos his impression that the OPS did not appear to have a clear idea of what use they would make of an injunction, how it would fit into their operational plans, or how they would enforce an injunction. Mr. White wanted to know how the injunction would be helpful to police operations before initiating an application for an injunction. Furthermore, the OPS had not yet informed him of what specific type of

[1] Text messages between Mr. White and Ms. Huneault: OTT00010771.0001.

[2] David White email: CONFIDENTIAL - Trucker Protest - Ottawa Police Request for Injunction, January 30, 2022: OTT00029695.0001.

injunctive relief would assist their operations. Lastly, it seemed to Mr. White that the OPS misunderstood what enforcement powers an injunction would provide. In particular, they seemed to believe it would provide authority to levy additional fines, which Mr. White explained was not the case.

In his email to Mr. Kanellakos, Mr. White mentions that "there does not yet seem to be significant violence associated with the event, nor much in the way of public safety concern, according to the police". In Mr. White's assessment, the City will typically seek an injunction when there is a public safety risk or emergency situation. Mr. White relied on the OPS's and EOC's public safety risk assessment, and so he had no public safety concerns at that time.

Based on the tone of his conversation with Chief Sloly, Mr. White concluded, and reported to Mr. Kanellakos, that "what the Chief is looking for is an opportunity to say that the City denied the OPS a tool and that they now cannot be blamed for any public criticism of the police handling of the protest".

Mr. White understands that Mr. Kanellakos had a conversation with Chief Sloly that same day. Mr. Kanellakos agreed that the City would begin the process of starting to consider bringing an injunction, but that the ultimate decision to do so would remain with the City.[3] Mr. Kanellakos instructed Mr. White accordingly.

Mr. White and his team worked collaboratively with the OPS to consider how an injunction could assist police in their operational plan. On February 4, 2022, Mr. White wrote to Ms. Huneault with a list of questions for the OPS. The City indicated that it needed answers to these questions to be able to put together a successful application for an injunction.[4] The OPS never provided an answer to these questions. It is Mr. White's impression that the OPS lost interest in having the City obtain an injunction after their initial discussion.

Ultimately, the City did file an application for an injunction on February 11, 2022. At the time, the City had itself gathered significant evidence of by-law infractions and it was felt that police action was becoming more imminent, meaning enforcement of the injunction would be possible. The City sought an injunction primarily for municipal purposes, as well as to potentially supplement police enforcement action.

The federal government and the government of Ontario intervened in the City's application for an injunction. Mr. White does not know exactly what contributions they made. The injunction was heard and obtained on February 14, 2022. Mr. White is not

[3] Email Chain: RE: Injunction, January 30-31, 2022: OTT00002090.0001.

[4] Email Chain: Fw: CONFIDENTIAL - Truck Convoy Protest – Injunction: February 4, 2022: OTT00029787.0001.

aware of whether or how the injunction was helpful in ending the demonstrations or supporting the OPS' enforcement action.

Other Measures

On February 7, 2022, Mr. White, provided City Council with a memorandum briefly addressing certain ideas being raised by members of Council or members of the public.[5] In addition, the City considered a number of other measures in relation to the demonstrations. Mr. White's office only communicated with the OPS with respect to the injunction issue.

Street Closures

Around February 2, 2022, members of Mr. White's department, Mary Simms and Omar Ansary, had a call with the OPS' legal department and they reported: "We asked if they had considered closing Wellington and she said that they were not there yet, that we were early on, and that they were keeping all options open".[6]

According to Mr. White, the City did not conduct its own legal analysis on the possibility of closing off street access to additional trucks coming to join the Convoy and he himself did not turn his mind to the issue. Mr. White understood from his discussions with Ms. Huneault that closing access to the downtown streets in this manner was a practical impossibility, and he did not pursue the idea further.

Discussions with GoFundMe

Mr. White attended a call with Mayor Watson and GoFundMe on February 3, 2022. During this call, GoFundMe explained what steps they were actively taking with respect to the funds raised in support of the Convoy. The City briefly considered legal means to obtain compensation from the funds raised on the platform but ultimately did not pursue this idea.[7]

By-Law Enforcement

According to Mr. White, the City's By-law and Regulatory Services (**BLRS**) had legal authority at all times to enforce by-laws and tow vehicles in the affected areas. In Mr.

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[5] David White: Memo to Mayor and Members of City Council, February 7, 2022: OTT00029770.0001.

[6] February 2, 2022 Memo from M. Simms and O. Ansari to D. White: OTT00029640.0001.

[7] Email chain: Go Fund Me - truck convoy, February 5, 2022: OTT00004037.0001.

White's view, any non-enforcement of City by-laws was likely due to issues of by-law officer safety and to avoid escalating tensions with the protestors.

Fine Increase

The City obtained increased fines under the *Provincial Offences Act* for certain by-law infractions. Mr. White does not recall whether his legal services team assisted BLRS with this process. His understanding is that increased fines were, in fact, issued and levied. According to Mr. White, the OPS did not make a request for this increase.

Selling Seized Vehicles

Towards the end of the protests, the Mayor made comments about his intention to sell the protesters' seized vehicles to cover the costs of the demonstrations. According to Mr. White, this idea was never pursued by the City. The vehicles were seized by the OPS, not the City.

Discussions with Federal and Provincial Counterparts

On February 7, 2022, Samantha Maislin, Assistant Deputy Minister with the Department of Justice, reached out to Mr. White.[8] This was only meant to open lines of communication and to offer general support. The only further communication Mr. White had with federal officials was with Ms. Maislin but only to provide a point of contact for the federal intervention in support of the City's injunction, described above.

Mr. White was not involved in any discussions with provincial officials.

OPSB's Authority

When asked about the OPSB's authority to direct the Chief of police, Mr. White explained that, in his view, there are no clear lines as to what constitutes an operational decision (with respect to which the OPSB cannot direct the Chief) under the *Police Services Act*.

[8] Email correspondence between Ms. Maislin and Mr. White, February 7, 2022: OTT00004843.0001.